GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of St. Martha's Hospital, Bangalore-2.

Award of the Labour Court, Bangalore—published.

Read the following papers :

(1) Letter No. 324/71-72, dated 28th May 1971 from Sri A. N. Sundara Murthy, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE

Dated this 28th day of May 1971

Present :

A. N. Sundara Murthy, B.A. B.L., Presiding Officer.

Reference No. 107 of 1969

First Party :—

Workmen represented by the General Secretary, Bangalore General Labour Union, Subedarchatram Road, Bangalore-9.

Vs.

Second Party—

The Management of St. Martha's Hospital, Bangalore-2.

Reference :

Government Order No. FCL 741 LLD 69, dated 22nd November, 1969.

AWARD

1. The Government of Mysore in their Order No. FCL 741 LLD 69, dated 22nd November 1969 have referred an industrial dispute existing between the above said parties to this court for adjudication on the points of dispute noted below :

"Is the Management of St. Martha's Hospital, Bangalore justified in terminating the services of Shri. M. Muthu, Ex-Cook of St. Martha's Hospital, Bangalore. If not, is he entitled to reinstatement with back wages and continuity of service in his former post ?"

2. On behalf of the first party claim statement is filed as follows :—

The first party workman M. Muthu joined the services of the second party as a cook on a monthly salary of Rs. 60. The second party was extracting work from him for more than 8 hours per day. He was not being given even the National and Festival Holidays and also privilege leave and sick leave. The first party workman requested the mangement of the second party to give him the statutory benefits. Thereafter the Management become angry and began to nurse a grudge against him and ultimately on 31st March 1969 he was wrongfully dismissed from service. At that time he was getting Rs. 75 per month. The termination is not justified for the following among other grounds :—

(a) Even-though grave charges were levelled against him such as "total unsatisfactory work" and "irregular attendance". no enquiry was conducted and no reasonable opportunity was given to him. Thus the Management have violated the principles of natural justice;

(b) Sri M. Muthu was victimised as he demanded the satutory benefits such as weekly holiday, privilege leave and sick leave etc.,

(c) The services of Sri M. Muthu have not been effectively terminated.

(d) No dismissal order has been served on Sri M. Muthu by the Management.

(e) The action of the Management is malafide and it amounts to unfair labour practice.

It is prayed that the first party workman may be reinstated with continuity of service and back wages.

3. On behalf of the second party rejoinder is filed as follows :— The second party is a society registered under the Mysore Societies Registration Act for the purposes of running the hospital called St. Martha's hospital. The founders of the society are nuns of the congregation of the Goodshepherd. Most of the members are qualified nurses who in co-operation with the other nuns serve the members of the public by offering medical help to the sick irrespective of their caste, creed race or religion. They offer their services as religious and charitable activity. They do not have any motive of profit or gain to

themselves. The section of the public which is poor are offered medical amenities including nursing services free of cost and they are served by the founding members as also the other qualified staff employed by the Society. The other members of the public who are unable to meet the full cost of the medical services rendered are charged partially and those who could afford to pay fully the cost of services rendered are charged accordingly. The second party is a teaching hospital of St. John's Medical College which is affiliated to Bangalore University. The Professors of the College as also the other members of the teaching staff work at the second party hospital in discharge of their duties as the staff of the said college. The students of the said college attend to the hospital for their classes and the hospital trains medical graduates during their housemenship. The representatives of the Indian Medical Council have also visited the Second Party Hospital for purposes of ensuring control over the standards of teaching, training and for maintaining the standards required of an hospital where teaching to the students of the St. John's Medical College is imparted. As a part of the hospital activity the second party is running a nursing school. The school is a source for recruiting efficient nurses to serve the needs of the hospital. The second party partakes the character of an educational institution. In view of the object of the second party referred to above the second party is not an "industry" within the meaning of Section 2 (j) of the Industrial Disputes Act. Hence the reference is incompetent and is liable to be rejected. The dispute in respect of the alleged illegal termination of the first party workman is an individual dispute. The present reference of this individual dispute is presumably on the basis of Section 2A of the Industrial Disputes Act which is ultra vires of the Constitution and it is opposed to fundamental rights. Further the deeming provision in Section 2A is destructive of harmony and industrial peace. Hence the reference is invalid and it is liable to be rejected. It is admitted that the first party workman was started on a monthly salary of Rs. 60. It is denied that he was appointed as a cook. He was tried in the kitchen and in the canteen and his cooking ability was found to be limited and his cooking unacceptable to the people who had to eat the food cooked by him. His services were terminated or the ground of his liability to cook food acceptable to the staff, students and the visitors of the hospital. His services were terminated not on the ground of misconduct. Hence there was no need to hold an enquiry. The allegations regarding the hours of work, weekly holiday, national and festival holidays, privilege and sick leave are neither relevant or necessary for adjudication of the present reference. The second party is a hospital. It is not required under any Act or law to fix the working hours at any particular minimum or maximum or to provide for weekly holidays or other benefits claimed. The second party has framed rules and regulations applicable to all its employees granting these and other facilities. It is denied that the first party workman asked for statutory benefits and the manage-

ment because angry and nursed a grudge against him and ultimately dismissed him from service. The termination of the services of the first party workman was termination simpliciter. Such termination would cast no stigma on him. The other allegations that grave charges were levelled against him, that he was victimised for demanding the statutory benefits and the action is malafide and amounts to unfair labour practice are all denied. It is pleaded that the first party workman is not entitled to reinstatement or any of the benefits as claimed by him. Hence it is prayed that the reference may be rejected.

4. The following issues are framed :—

1. Whether II Party is not an industry under Section 2 (j) of the Industrial Dispute Act ?
2. Whether the termination is a termination simpliciter ?
3. Whether the termination is opposed to the principles of natural justice ?
4. Whether the termination is due to victimisation ?
5. Whether substantial number of the employees of II Party have sponsored the cause of I Party workman ?
6. Whether the dispute is an individual dispute under Section 2A of the Industrial Disputes Act and therefore ultra-vires of the Constitution and whether such question could be gone into in this reference ?
7. Whether I Party workman is entitled to be reinstated with back wages and continuity of service ?

5. The matter was posted for evidence in respect of issue Nos. 1 and 6 as preliminary issues. On 10th May 1971 the counsel for the second party submitted that in view of the decision of the High Court of Mysore in respect of the validity of Section 2A of the Industrial Disputes Act, issue No. 6 was not pressed. Hence issue No. 6 was held against the second party. Now issue No. 1 remains for consideration.

6. The point for consideration is whether the second party is not an 'industry' under Section 2(j) of the ndustrial Disputes Act. On behalf of the second party the Resident Medical Officer of the second party is examined as M.W. 1 In the course of his evidence he states that the sisters of the Goodshephered are running the second party hospital ; it is registered as a Society as per Ex. M. 1 It is a religious society. As per Clause 2(f) of the Memorandum of Association it should be run on a no profit basis ; Ex. M. 1(a) is the relevant portion; the Members have no rights over the properties; they are only trustees ; Ex. M. 1 (b) is the relevant portion ; The Goodshepherd sisters are the Founders ; they are medically and educa-

tionally qualified; the main object is to look after the sick without reference to caste, creed or religion; the second partly is affiliated to St. John's Medical College to give practical training to medical students; the authorities of the University and the Medical Council visit the hospital and determine the suitability and facilities available for the education of the students; the second party-second party tained a nursing school for the training of ... Ex. M. 2 to M. 4 is incurring more expenditure ... Ex. M. 2 the second party has are the b... as per Ex. M. 3 the second party has incurred an expenditure of Rs. 4,16,635 over the income for the year 1969; as per Ex. M. 4 the second party has incurred an expenditure of Rs. 5,15,181 in excess of the income for the year 1970; there are two types of patients, i.e., patients who partly pay and the patients who do not pay; there are no free beds; after the patients are treated the cost is assessed according to certain rates; then bills are submitted to the patients; if they do not pay the second party keeps quiet; the second party has maintained books of accounts wherein the amounts which are not recovered are shown as written off.

7. On behalf of the first party, the first party workman is examined as W. W. 1. In the course of his evidence he states that the second party is not giving treatment to any one free of cost. The second party pays Rs. 10 for a donor of blood and collects Rs. 40 from the patient; the second party is running a Chemist and Druggist store inside the hospital; from this the second party earns Rs. 1,00,000 per month; If a doctor gives an injection to a patient and if Rs. 10 is collected, Rs. 6 is given to the doctor concerned and Rs. 4 is taken by the second party; the second party is running a canteen in the hospital; from this the second party earns Rs. 50,000 a mouth; the second party has nothing to do with St. John's medical college; the medical students come for training only; the second party charges Rs. 4 to Rs. 25 per bed; from this the second party earns about 7 to 8 lakhs of rupees per year; the second party trains nurses and from this the second party earns Rs. 10,000 per year; the second party charges for the operation theatre at the rate of Rs. 25 to Rs. 550 per case, the second party has leased some quarters to missioneries and from this it realises about Rs. 5,000 per year; from the dispensary the second party earns Rs. 10 lakhs per year; for the examination of pregnant women the second party collects Rs. 5 to Rs. 25 per each case; from this the second party gets about Rs. 2,00,000 per year; the second party gets old clothes from America; by selling them the second party gets Rs. 5,000 per year.

8. It is contended on behalf of the second party that the second party is a religious and charitable institution and it is run

on no profit basis; the second party is a teaching hospital attached to the St. John's medical college and it is also running a nurses school; the second party is actually incurring losses year to year; the second party is not an 'industry'. In support of the contentions urged on behalf of the second party the decision reported in 1970 II L.L.J. — Safdarjung Hospital Vs Kuldip Singh Sethi) is relied upon.

9. According to the first party the hospital on commercial lines and is earning enormous profits. main intention of the second party is not religious or charitable, but it only to make profit; hence it is an 'industry'.

10. In the above said decision the conclusion arrived at by the Supreme Court in Madras Gymkahana Club case (A. R. 1968 S. C. 554) are accepted and it is laid down as follows:—

> "... before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services."

In the said decision the Supreme Court has referred to the activities of the tuberculosis hospital which is a part of the tuberculosis association of India and also the hospital run by Kurji Holi Family. The Supreme Court has observed that the said hospitals are wholly charitable in character and they carry on training, research and treatment and those hospitals cannot be run without beds and therefore these hospitals cannot be described as 'industry'. In the above said decision it is also observed that if a hospital, nursing home or a dispensary is run as a business in a commercial way there may be found an element of 'industry' there. Keeping in mind the contensions urged on behalf of both the sides and also the principles laid town in the above said decision it will have to be seen whether the second party will be an industry or not.

11. In this case evidence of M. W. 1 remains unchallenged. In the course of the evidence of W. W. 1 he has given several details to show that the second party is making enormous profits. If the version of W. W. 1 is really true it cannot be understood why when M. W. 1 was examined before the court no suggestion was put to him in that behalf. Except the interested oral testimony of W. W. 1 there is no other evidence to substantiate what W. W. 1 has stated in the course of his evidence. In this case admittedly the second party is registered under the Mysore Societies Registration Act 1960. A copy of the memorandum of association and rules and regulations of the second party is produced as per Ex. M. 1. The objects of the second party are stated in the memorandum of association. The main purpose of the second party is to maintain and

to manage the second party hospital for proper medical and surgical treatment of patients irrespective of caste, creed race or religion and to provide for the care, nursing and attention as may be required for the proper treatment on such terms as the Governing Body may deem fit. It is also the object of the second party to run the second party hospital on a non-profit basis and in the event of any surplus the same will be utilised for the attainment of its objects as per Ex. M. 1 (a). The Rules and Regulations [illegible] is marked as Ex. M. 1 (b) which reads moveable and immovable belonging to society shall vest in the Governing Body of the Society and all properties to be hereafter acquired or received as gifts in purusance of the objects of the Society shall be acquired in the name of the Society. The members of the Governing body shall only be trustees and will not by any means be the individual owners of the properties of the Society."

From this it is seen that the Governing Body shall only be trustees and they will not be by any means the individual owners of the properties of the Society. In this case the balance sheets of the second party for the years ending on 31st March 1968, 31st March 1969 and 31st March 1970 are produced as per Ex. M. 2 to M. 4. From these balance sheets it will be seen that as stated by M. W. 1 the second party has not made any profits. But it has sustained losses. If the second party was really being run on profit motive on commercial basis it would not have sustained losses. The manner in which the second party is run it is clear that its main object is to serve patients without any profit motive as referred to above. As contended on behalf of the second party the second party is also a teaching hospital of St. John's medical college. The students of the said college attend the second party hospital for their classes and also to receive training. The second party is also running a nurses training school solely for the purpose of recruiting efficient nurses to serve the hospital. From these activities of the second party it will be seen that it is more in the nature of an educational institution and it is not an institution run on commercial lines to earn profits. No doubt as stated by the first party workman the second party is running a Chemists and Druggists shop, a canteen and a compounding section. These are all accessories mainly to provide facilities to the patients. The second party may make some profits by running the said canteen, stores and the compounding section. There is nothing to show that the second party is making huge profits by running them as sought to be made out by W. W. 1. Taking the facts and circumstances of the case I have no hesitation in coming to the conclusion that the second party institution will definitely come under the purview of the decision of the Supreme Court referred to above. In view of this fact I hold that the second party

is not an industry under Section 2 (j) of the Industrial Disputes Act and the reference is not competent and it is liable to be rejected.

12. In view of this finding there is no need to consider the other issues in the case.

13 In the result the reference is rejected. No costs.

Presiding Officer,
Labour Court, Bangalore

ORDER

Bangalore, dated 7th June 1971

SO. 1137.—Whereas by State Government Order No. FCL 741 LLD 69,dated 22nd November 1969 the Industrial Dispute between the Workmen and the Management of St. Martha's Hospital, Bangalore-2 was referred to the Labour Court, Bangalore for adjudication.

And, Whereas the Labour Court has submitted to the State Government its award in respect of the said industrial Dispute.

Now, therefore in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the Mysore Gazette.

[No. FCL 64 LLA 1971]

By Order and in the name of the President of India,

Anirudha Desai,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.